



KHWEZI FINANCIAL SERVICES TRADE AGREEMENT

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TRADE AGREEMENT TERMS AND CONDITIONS

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TRADE AGREEMENT TERMS AND CONDITIONS

PART 1 – INTRODUCTORY PROVISIONS

1 INTERPRETATION

- 1.1 In the Trade Agreement, unless inconsistent with or otherwise indicated by the context –
- 1.1.1 **“Abnormal Market Conditions”** means any abnormal, emergency or unusual condition in any foreign exchange, securities, commodities, derivatives or futures market or exchange that, in the reasonable opinion of Khwezi, affect or will likely affect –
- 1.1.1.1 the prices, rates or availability of any currency, commodity, derivative or future; or
- 1.1.1.2 the ability of Khwezi to make available any prices or rates in any currency, commodity, derivative or future;
- 1.1.2 **“Applicable Laws”** means all laws, regulations, by-laws, rules and directives issued by a competent authority and binding on a Party, whether in respect of the conduct of business of the Party, the Trade Agreement or any Trade;
- 1.1.3 **“the Application”** means the application completed and submitted by the Client by means of the Website to enter into the Trade Agreement and receive the Services;
- 1.1.4 **“Bank Mandate”** means the bank mandate signed by the Client upon submitting the Application;

- 1.1.5 “**Business Day**” means any day that is not a Saturday, Sunday or South African public holiday;
- 1.1.6 “**Client Funds**” means the funds paid by the Client to Khwezi for the purpose of holding same as segregated funds in the TPFA Account;
- 1.1.7 “**Data Protection Laws**” means any and all Applicable Laws relating to or regulating the protection of data or of personal information, and which may be applicable in South Africa from time to time, including Protection of Personal Information Act, 4 of 2013, the Consumer Protection Act 68 of 2008, and the Electronic Communications and Trades Act 25 of 2002;
- 1.1.8 “**FAIS Act**” means the Financial Advisory and Intermediary Services Act, 37 of 2002, as amended from time to time;
- 1.1.9 “**the Fee Schedule**” means the fee overview locate on the Website, as amended by Khwezi from time to time;
- 1.1.10 “**Fees**” means the commission and swap fee levied by Khwezi in respect of each Trade as set out in the Fee Schedule or any other fees, costs and expenses payable by the Client in accordance with these Terms and Conditions;
- 1.1.11 “**Khwezi**” means Khwezi Trade, a division of Khwezi Financial Services Proprietary Limited, with registration number 2013/129459/07, a private company with limited liability duly registered in accordance with the laws of the Republic of South Africa, and an authorised financial services provider with FSP Licence Number 44816;
- 1.1.12 “**Margin**” means in respect of each Trade the amount to be held as a free margin in the Trading Account in excess of the value of the Trade, which Margin is calculated as a percentage of the value of the Trade, as determined by Khwezi from time to time;

- 1.1.13 “**the Parties**” Khwezi and the Client and “**Party**” means any one of them as the context may indicate;
- 1.1.14 “**Schedules**” means the schedules that may be posted from time to time on the Website and designated by Khwezi as part of the Trade Agreement, including but not limited to the Fee Schedule;
- 1.1.15 “**Security Credentials**” means, in relation to a Trading Platform, any security credentials that the Client uses to access or use the Trading Platform, including any user name, account number, passwords and verification questions;
- 1.1.16 “**Services**” means the services provided by Khwezi to the Client as described in clause 5.1;
- 1.1.17 “**Terms and Conditions**” means the terms and conditions set out in this document, as amended from time to time;
- 1.1.18 “**TPFA Account**” means the segregated third party funds administrators account opened and administrated by Khwezi on behalf of the Client in terms of the Bank Mandate;
- 1.1.19 “**Trade**” means –
- 1.1.19.1 when used as a noun, any transaction involving, or referable to the value of, or granting rights or accepting obligations in respect of or by reference to –
- 1.1.19.1.1 financial instruments; and
- 1.1.19.1.2 one or more currencies, indices , commodities which for the avoidance of doubt includes currency option transactions; and
- 1.1.19.2 when used as a verb, the entering into, conduct or executing of any action related to a transaction referred to in clause 6;

- 1.1.20 “**Trade Agreement**” means the agreement between the Parties which regulates Trades on the Trading Platform and is constituted of –
- 1.1.20.1 the Application;
- 1.1.20.2 these Terms and Conditions;
- 1.1.20.3 the Risk Disclosure Statement located on the Website;
- 1.1.20.4 the FSP Disclosure Statement located on the Website; and
- 1.1.20.5 the Schedules;
- 1.1.21 “**Trading Account**” means a running trading account maintained on the Trading Platform for the purpose of recording Trades, as defined in more detail in clause 12.1;
- 1.1.22 “**Trading Platform**” means the online trading platform made available by Khwezi from time to time to conclude Trades;
- 1.1.23 “**Website**” means the website operated by Khwezi at URL address <https://www.khwezitrade.co.za/>;
- 1.1.24 “**Writing**” means legible writing in English, or any other language acceptable to Khwezi, including printing, typewriting, or any other mechanical process, as well as any electronic communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost and “**Written**” and “**Write**” shall have the corresponding meaning;
- 1.1.25 words importing the singular shall include the plural and *vice versa*;
- 1.1.26 words importing natural persons includes legal persons and partnerships and *vice versa*;
- 1.1.27 words importing one gender includes the other genders;

- 1.1.28 any reference to an enactment is to that enactment as at the date of conclusion hereof and as amended or re-enacted from time to time; and
- 1.1.29 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.2 The clause headings in these Terms and Conditions have been inserted for reference purposes only and shall not affect the interpretation of any provision of these Terms.
- 1.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which the sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of these Terms and Conditions, notwithstanding that it is only contained in this interpretation clause.
- 1.5 If any period is referred to in these Terms and Conditions by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.
- 1.6 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of these Terms, shall not apply.
- 1.7 The Trade Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.
- 1.8 Expressions defined in these Terms shall bear the same meanings in any part of the Trade Agreement which does not contain its own definitions.

2 APPLICATION

By submitting the Application, the Client –

- 2.1 warrants that the information submitted as part of the Application is true and correct;
- 2.2 warrants that he has read and understood these Terms and Conditions, the Risk Disclosure Statement and the FSP Disclosure forming part of the Trade Agreement; and
- 2.3 agrees to be bound to the Trade Agreement.

PART 2 – SERVICE

3 DURATION

The Trade Agreement shall commence on the date on which Khwezi notifies the Client that the Trading Account has been opened. The Trade Agreement shall endure indefinitely until such time as it is terminated in terms of clause 29 or otherwise in terms of Applicable Laws.

4 NATURE OF MANDATE

- 4.1 The Client warrants that he enters into the Trade Agreement and each Trade as principal and not as agent.
- 4.2 The Trade Agreement constitutes a non-discretionary mandate to Khwezi to provide intermediary services to the Client on his Instructions.
- 4.3 In rendering the Services, Khwezi –
 - 4.3.1 does not provide any advice, recommendation, opinion or guidance in relation to the entry into of the Trade Agreement or any Trade;
 - 4.3.2 does not grant any opinion, approval, recommendation in respect of the investment decisions of the Client;

- 4.3.3 does not consider any of the Client's objectives, financial situation and needs;
- 4.3.4 may provide general information to the Client that Khwezi provides to its clients generally, it being agreed that such information will not take into account the particular needs, objectives or financial circumstances of the Client; and
- 4.3.5 does not create a fiduciary relationship between the Client and Khwezi.

5 SERVICES

- 5.1 Subject to these Terms and Conditions, Khwezi shall render intermediary services to the Client by –
 - 5.1.1 making the Trading Platform available to the Client for the purpose of executing Trades, provided that the operation and availability of the Trading Platform is subject to clause 9;
 - 5.1.2 operating the TPFA Account on behalf of the Client, subject to the Bank Mandate; and
 - 5.1.3 send trading statements to the Client on a daily basis by way of electronic mail.
- 5.2 Notwithstanding clause 5.1, Khwezi shall not be obliged to perform the Services if the Client has failed to comply with any obligations in terms of this Agreement.

6 TRADES

- 6.1 The Client shall place Trades from time to time on the Trading Platform. By placing a Trade on the Trading Platform, the Client warrants that he has read and understood these Terms and Conditions, the Risk

Disclosure Statement, the FSP Disclosure, the Schedules applicable to the Trade.

- 6.2 In exceptional circumstances and subject to the approval of Khwezi, the Client may request Khwezi to place a Trade on behalf of the Client in accordance with the specific instructions of the Client (“**Instruction**”). It shall at all times be in the sole and absolute discretion of Khwezi whether it shall accept such Instruction.
- 6.3 Upon acceptance of such Instruction, Khwezi shall confirm the Instruction telephonically and execute the Trade on behalf of the Client.
- 6.4 The execution of a Trade on the Instruction of the Client shall not place any obligation on Khwezi to notify the Client of any dates, times or events relevant to the Trade.

7 SETTLEMENT

- 7.1 The Client authorises Khwezi to withdraw the following amounts from the TPFA Account and debit the TPFA Account accordingly –
- 7.1.1 any and all amounts payable by the Client to Khwezi in terms of the Trade Agreement as and when such amounts become due and payable, including but not limited to Fees, interest charged on Trading Accounts and costs and expenses payable by the Client; and
- 7.1.2 any amount payable by the Client in respect of any Trade, which amount shall be applied to make payment as required in terms of the Trade.
- 7.2 Khwezi may, in its absolute discretion, and on prior Written notice to the Client, set-off any amounts payable by the Client in respect of a Trade against any amounts payable to the Client in respect of a Trade if such amounts are payable in the same currency and are payable on the same day. The net amount payable after set-off is applied as aforesaid, shall remain payable.

8 TRADING HOURS

- 8.1 Khwezi's normal business hours are between 8:00 and 17:00 on every Business Day. Khwezi reserves the right to change its normal business hours and shall post any change to its normal trading hours on the Online Trading Platform. Khwezi shall operate a designated customer support line from 7:00 until 22:00 on every Business Day.
- 8.2 The Client shall be entitled to place Trades at any time during which the relevant markets are open to accept Trades, it being recorded that market trading hours are between 0:00 on Monday to 22:00 on Friday, subject to closes for rollover and daylight savings time.

9 TRADING PLATFORM

9.1 Use of Trading Platform

The Client shall only be entitled to Trade using the Trading Platform, unless otherwise specifically provided for herein.

9.2 Security

- 9.2.1 Upon opening of the Trading Account, Khwezi shall issue the Client with Security Credentials. The Client shall only be entitled to use the Trading Platform using the relevant Security Credentials issued to the Client.
- 9.2.2 The Client shall be responsible for the security and confidentiality of the Security Credentials. Any communication received using the Security Credentials shall be deemed to be received from the Client. Khwezi shall have no responsibility to verify the authority of any person accessing a Trading Platform using the Security Credentials.
- 9.2.3 Notwithstanding clause 9.2.1, if Khwezi determines that the security surrounding any Trading Platform, or the security or confidentiality of any Security Credentials is or has been breached, Khwezi may

terminate, revoke, suspend, modify or change any or all of the Security Credentials at any time, without prior notice.

9.2.4 The Client is responsible for ensuring the adequacy and security of the operating environment, both physical and electronic, in which the Client accesses and uses the Trading Platform.

9.2.5 The Client shall maintain appropriate security measures to prevent unauthorised access to, use of or damage to the Trading Platform and any information systems accessible through the Trading Platform.

9.2.6 Where the Client accesses and uses the Trading Platform from any laptop computer or other portable device, the Client shall take all measures necessary to ensure the security, integrity and reliability of such computer or other portable device, including the security of the internet connection, and the Client is solely liable for any failure in such computer or other portable device's security, integrity or reliability.

9.2.7 The Client shall comply with all reasonable operational and security procedures notified by Khwezi from time to time and to inform Khwezi immediately of any breach of security.

9.3 **Record of Instructions on Trading Platform**

Khwezi may keep a record of all communication with the Client, including but not limited to telephone conversations between the Client and Khwezi. Khwezi may use its record of communication as evidence in any proceedings instituted in terms or related to the Trade Agreement. The Client acknowledges and agrees that Khwezi is under no obligation to retain the record of Instructions and that Khwezi may destroy such recording.

9.4 **Limitation of liability**

Khwezi shall have no responsibility or obligation to –

- 9.4.1 provide support for or maintenance of any Trading Platform, including by supplying any corrections, updates or new releases;
- 9.4.2 inform the Client of any difficulties Khwezi or other third parties experience in relation to use of or access to a Trading Platform or to take any action in relation to those difficulties; and
- 9.4.3 to verify, correct, complete or update any information displayed on the Trading Platform.

10 MARKET DATA

The Trading Platform may display market data and other purely factual information (“**Market Data**”). The Client acknowledges and agrees that where the Trading Platform displays Market Data –

- 10.1 Khwezi does not endorse or approve the Market Data and makes it available to the Client only as a convenience;
- 10.2 Khwezi does not guarantee the accuracy, timeliness, and completeness or correct sequencing of the Market Data;
- 10.3 Khwezi does not warrant any results from the Client’s use or reliance on the Market Data;
- 10.4 Khwezi is not obligated to update any information or opinions contained in any Market Data;
- 10.5 Khwezi may discontinue displaying Market Data on the Trading Platform at any time;
- 10.6 Khwezi will not be liable in any way for the termination, interruption, delay or inaccuracy of any Market Data; and

- 10.7 the Client will not redistribute or facilitate the redistribution of Market Data to any third party.

PART 3 - ACCOUNTS AND PAYMENTS

11 MY KHWEZI PROFILE

Upon acceptance of the Application, Khwezi shall issue the Client with a client profile referred to as “My Khwezi”. The Client’s details shall be set out in such client profile. The Client shall have access to his My Khwezi profile by using his Security Credentials. The Client shall be responsible to update his “My Khwezi” client profile in the event of any change in his particulars.

12 TRADING ACCOUNT

- 12.1 Upon acceptance of the Application, Khwezi shall open a trading account for the Client which shall reflect the following –

- 12.1.1 Client Funds held in the TPFA Account;
 - 12.1.2 open Trade positions held by the Client;
 - 12.1.3 withdrawals made by the Client from the Trade Account;
 - 12.1.4 swap fees charged by Khwezi in terms of this Agreement; and
 - 12.1.5 the net amount payable to the Client taking into account the funds held in the TPFA Account, all open Trade positions, including Margins on Trades and Fees payable to Khwezi.
- 12.2 No interest is payable by Khwezi on the credit balance of a Trading Account.

13 TPFA ACCOUNT

- 13.1 A TPFA Account will be opened for the purpose of holding Client Funds.

- 13.2 The TPFA Account will be subject to the Bank Mandate.
- 13.3 All Client Funds will be deposited into the TPFA Account.
- 13.4 Khwezi shall administer the TPFA Account in accordance with the Bank Mandate and shall *inter alia* be entitled to apply Client Funds in the TPFA Account –
- 13.4.1 to make payment on behalf of the Client in respect of a Trade; and
- 13.4.2 to make payment to Khwezi of any amounts payable to it in terms of the Trade Agreement as and when they become due and payable, including but not limited to Fees and interest accrued on Trading Accounts.
- 13.5 Khwezi shall be entitled to deduct from the TPFA Account any funds deposited into or credited to the TPFA Account in error, whether such funds are deposited by Khwezi or any other person.

14 NO PAYMENTS TO AND FROM THIRD PARTY ACCOUNTS

- 14.1 Khwezi shall not accept any funds intended to be Client Funds paid from any account other than the account of the Client ("**Third Party Account**") and accordingly Khwezi –
- 14.1.1 shall, return any payment from a Third Party Account; and
- 14.1.2 does not accept or bear any liability or responsibility for any loss, including consequential loss, incurred or sustained by the Client as a result of or arising out of Khwezi returning any funds paid from a Third Party Account, including loss incurred or sustained by the Client because it is subsequently in default of its obligations under the Trade Agreement or any Trade.
- 14.2 Similarly, Khwezi shall not make payment into any Third Party Account.

15 FEES AND EXPENSES

- 15.1 Khwezi shall be entitled to payment of the Fees in accordance with the Fee Schedule.
- 15.2 It is recorded that the following Fees are payable to Khwezi –
- 15.2.1 commission, being the spread between the buying price and selling price in respect of the Trade as calculated in accordance with the Fee Schedule;
- 15.2.2 the swap fee, being a rate of interest calculated on short and long positions in the event of a Trade being rolled over; and
- 15.2.3 such other fees as may be set out in the Fee Schedule from time to time.
- 15.3 The Client acknowledges and agrees that Khwezi may share commissions, fees and charges with third parties or receive remuneration from third parties in respect of Trades. Khwezi will disclose any such sharing of commissions, fees and charges as required in terms of Applicable Law.

PART 4 – COMPLIANCE

16 REGULATORY COMPLIANCE

- 16.1 It is recorded that Khwezi provides the Services subject to and under the authority of the Applicable Laws.
- 16.2 Notwithstanding any other provision of the Trade Agreement, Khwezi may take any action it considers necessary or desirable, as it in its absolute discretion determines, to ensure compliance with Applicable Laws.
- 16.3 Each Party undertakes to comply with Applicable Laws in the exercise of its rights and the performance of its obligations in terms of the Trade Agreement and in respect of each Trade.

- 16.4 Khwezi shall be entitled to appoint a person or juristic entity, authorised as its authorised representative in terms of the FAIS Act (“**the Authorised Representative**”), to represent Khwezi in the performance of its obligations under the Trade Agreement and delegate all or any of its powers and authorities in terms of the Trade Agreement to such Authorised Representative.

17 RECORDS AND AUDIT

- 17.1 The Client shall for the duration of the Trade Agreement, and for a period of 3 (three) years thereafter, maintain his accounting and computer records relevant to the Trade Agreement.
- 17.2 The Client shall permit Khwezi to conduct an audit in respect of the Client’s access to and use of the Trading Platform, including the Client’s records of its access to and use of the Trading Platform. The Client shall provide Khwezi with all such reasonable assistance in respect of such audit.

18 TAXES

The Client shall be responsible for all taxes, levies, value-added tax and duties payable in respect of the Trades and Khwezi bears no responsibility in this regard.

PART 5 - RISK AND LIABILITY

19 REPRESENTATIONS AND WARRANTIES

- 19.1 The Client represents and warrants that –
- 19.1.1 his obligations under the Trade Agreement and each Trade are legal, valid, binding and enforceable in accordance with its terms;
- 19.1.2 no litigation, arbitration or administrative proceeding is current, pending or, to his knowledge, threatened that has or could have a

material adverse effect on the ability of a Party to exercise or enforce its rights under the Trade Agreement or any Trade;

- 19.1.3 he is solvent and able to pay his indebtedness as it falls due;
- 19.1.4 no Event of Default has occurred and is continuing;
- 19.1.5 all information provided by the Client to Khwezi in connection with the Trade Agreement and each Trade is true and accurate as at the date when that information was provided and remains so as at the date of the Trade Agreement;
- 19.1.6 there are no facts or circumstances that have not been disclosed to Khwezi that would make that information untrue or misleading in any material respect;
- 19.1.7 the Client's access to and use of the Trading Platform complies with –
 - 19.1.7.1 all Applicable Laws;
 - 19.1.7.2 all applicable policies and practices of securities and futures exchanges and associations, alternative trading facilities, and regulatory or self-regulatory organisations;
 - 19.1.7.3 the policies and procedures, whether stated orally or in writing, applicable to the Trading Platform and the Trade Agreement;
 - 19.1.7.4 the Client is acting for his own account, and it has made its own independent decision to enter into the Trade Agreement and each Trade, and whether any Trade is appropriate or proper, based upon the Client's own judgment and upon advice from such advisers as the Client has deemed necessary;
 - 19.1.7.5 the Client is not relying on any communication, whether Written or oral, of Khwezi as investment advice or as a recommendation to enter into the Trade Agreement or any Trade, it being

understood that information and explanations related to the terms and conditions of a Trade are not considered investment advice or a recommendation to enter into that Trade;

19.1.7.6 the Client has not received from Khwezi any assurance or guarantee as to the expected results of any Trade;

19.1.7.7 the Client is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of each Trade;

19.1.7.8 the Client is capable of assuming, and assumes, the financial and other risks of each Trade; and

19.1.7.9 except as disclosed to, and accepted in writing by, Khwezi, no security interest exists over or affects, nor is there any agreement to give or permit to exist any security interest over or affecting, any Trading Account or amounts payable or paid to Khwezi.

19.2 If the Client is a juristic person, the Client represents and warrants that –

19.2.1 it is duly incorporated or registered, has full power and authority to enter into and comply with its obligations under the Trade Agreement and each Trade;

19.2.2 the execution and delivery of, and observance under, the Trade Agreement and each Trade, and any instrument in connection with the Trade Agreement to which it is a party, do not violate or conflict with any Applicable Laws, any provision of its constituent documents, any order or judgment of any court or public authority applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

19.2.3 all consents required to be obtained by it in connection with the execution, delivery and performance of the Trade Agreement,

including in relation to its access to and use of a Trading Platform, have been obtained and all Trades are valid and subsisting.

19.3 Each of the representations and warranties in this clause shall remain of force and effect for the duration of the Trade Agreement is deemed to be repeated continuously in respect of each Instruction.

20 RISK

20.1 The Client warrants that he understands and accepts –

20.1.1 that his capital is at risk as markets can be volatile and unpredictable;

20.1.2 the risks of entering into Trades as set out in the Risk Disclosure Statement located on the Website, the terms of which he has read and understood; and

20.1.3 that the entering into Trades incurs the risk of loss as well as the prospect of profit.

20.2 The Client –

20.2.1 acknowledges and agrees that there are significant risks associated with using and relying on the Trading Platform, including risks related to the use of software or telecommunications systems, such as software errors and bugs, delays in telecommunications systems, interrupted service, data supply errors, faults or inaccuracies and security breaches;

20.2.2 assumes all risk of use or attempted use of the Trading Platform and any data provided by way of the Trading Platform; and

20.2.3 acknowledges and agrees that he has no recourse against Khwezi in relation to the use or availability of a Trading Platform or any errors in software or related information systems.

21 INSURANCE

Khwezi shall, to the extent required in terms of the FAIS Act, arrange and maintain, at its own expense, insurance cover in respect of any liability which may be incurred by Khwezi in connection with the Trade Agreement.

22 INDEMNITY

- 22.1 The Client indemnifies and agrees to hold Khwezi harmless against any and all loss, damage, demand, claims, cost and expense, including legal fees on an attorney-own client scale, including consequential loss (“**Indemnified Loss**”) suffered, sustained or incurred by Khwezi arising out of or in connection with –
- 22.1.1 any breach of representation or warranty made by the Client under or in connection with the Trade Agreement or any Trade;
 - 22.1.2 any failure by the Client to comply with or perform any of its obligations under or in connection with the Trade Agreement or a Trade;
 - 22.1.3 any access or use or attempted access or use to or of a Trading Platform by the Client and any person accessing or using a Trading Platform through any Security Credentials, whether or not such access or use is authorised by the Client;
 - 22.1.4 any third-party claim related to the access or use or attempted access or use to or of a Trading Platform by the Client, any component of a Trading Platform or any data provided through a Trading Platform or relating to decisions or advice arising out of such access or use;
 - 22.1.5 any claim by any third-party licensor arising or resulting from the Client’s access or use or attempted access or use to or of the Trading Platform;

- 22.1.6 any insufficiency whatsoever with respect to the environment from which the Client accesses or uses a Trading Platform and/or with respect to the Client's security measures to prevent unauthorised access to or use of a Trading Platform and any security breach in relation to a Trading Platform (including any access to or use of any of Khwezi's other systems not covered by the Trade Agreement and any software viruses or other activities that comprise The security arrangements of Khwezi's infrastructure or network) caused directly or indirectly by the Client;
- 22.1.7 any error, corruption or delay in any Instruction;
- 22.1.8 acting on any Instruction which is, or appears to be communicated using any Security Credentials; and/or
- 22.1.9 the termination by Khwezi of any Trade under the Trade Agreement.
- 22.2 The indemnity set out in clause 22.1 shall not extend to any Indemnified Loss sustained or incurred by Khwezi as a result of its gross negligence or willful default.
- 22.3 Each indemnity in this clause constitutes a separate and independent obligation of the Client.

23 EXCLUSION OF LIABILITY

- 23.1 Khwezi is not liable to the Client for any loss, damage, demand, claims, cost and expense suffered or incurred by the Client ("**Client Loss**") arising out of or in connection with the Trade Agreement or any Trade, whether in contract, delict, or otherwise, including but not limited to any Client Loss arising from –
- 23.1.1 the Client's failure to report any error in his statements within 24 (twenty-four) hours from delivery of the statement to the Client;

- 23.1.2 any misrepresentation of any information or general financial advice provided by or on behalf of Khwezi in relation to the Trade Agreement or a Trade;
- 23.1.3 except in the case of fraud by Khwezi, the reliance of the Client on a rate or a price which the Client knew, or ought reasonably to have known, to be materially incorrect;
- 23.1.4 the entry into of a Trade, or other action, by the Client on the basis of money deposited in or credited to the Trading Account in error by or on behalf of Khwezi;
- 23.1.5 the occurrence and continuance of any Force Majeure;
- 23.1.6 any failure or inability of the Client to access or use The Trading Platform for its intended purposes, whether as a result of failure by Khwezi or otherwise;
- 23.1.7 any deficiency whatsoever of the Trading Platform, including failure of, or inability to, access or use the Trading Platform;
- 23.1.8 the occurrence of Abnormal Market Conditions, it being recorded that any negative balance in the Trade Account arising from such Abnormal Market Condition shall be for the account of the Client and will be payable by the Client to Khwezi upon delivery of a statement of the Trade Account indicating such negative balance;
- 23.1.9 any failure of a telecommunications link or network by which the Client may seek access to or use of the Trading Platform; or
- 23.1.10 with respect to any information published on the Website, including any claims or losses in relation to the accuracy, reliability or timeliness of such information; and

- 23.1.11 with respect to any support, advice or assistance provided by Khwezi, including any claims or losses in relation to technical support, trading support and account administration support.

24 LIMITATION OF LIABILITY

Subject to the exclusions set out in clause 22 and 23, Khwezi's liability arising from the Trade Agreement shall be limited to the direct loss suffered by the Client in respect of the relevant Trade in respect of which the liability arises.

PART 6 - CONFIDENTIALITY AND INTELLECTUAL PROPERTY

25 DATA PROTECTION LAWS

- 25.1 When processing the Client's personal information, Khwezi shall –
- 25.1.1 ensure that it complies with all Applicable Laws, including Data Protection Legislation; and
- 25.1.2 use and hold the Client's information for the purposes of performing its obligations and exercising its authority and rights in terms of the Trade Agreement.

26 CONFIDENTIALITY

- 26.1 Each Party acknowledges and agrees that any information supplied in connection with the Trade Agreement or in connection with the technical, industrial or business affairs of the other Party ("**the Disclosing Party**") or its subsidiaries or associated companies which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them ("**the Receiving Party**") may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Disclosing Party.
- 26.2 The Receiving Party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by

whatever means and not to make use thereof other than for the purposes of the Trade Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of the Trade Agreement and agree not to release or disclose it to any other party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of the Trade Agreement.

26.3 The undertaking and obligations contained in this clause do not apply to information which –

26.3.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties;

26.3.2 is already in possession of the receiving party prior to its receipt by or disclosure to such receiving party;

26.3.3 is required by law, any order of court, or any regulatory authority to be disclosed; and

26.3.4 after being disclosed to the receiving party is disclosed by any other person to the receiving party otherwise than in breach of any obligation of confidentiality.

26.4 The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors, employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.

26.5 Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of the Trade Agreement or its content or the transaction embodied in the Trade Agreement shall be made or issued by or on behalf of any party without the prior written agreement of all the Parties.

27 INTELLECTUAL PROPERTY

- 27.1 For the purpose of this clause “**Khwezi Materials**” means all products, goods, software, software documentation, documentation, literature, materials, tools, data, information, databases, modules, components, compilations of data, methodologies, processes, policies, procedures, techniques, models, configurations, protocols, routines, interfaces (including API interfaces), reports, plans, notes, files, diagrams, manuals, templates, schematics, correspondence, designs, circuit designs, algorithms, specifications, records, equipment, hardware, servers, computers, platforms, computer code, derivative works, and works of authorship, and irrespective of the form and format of the foregoing and whether tangible or intangible, relating to the Trading Platform and the provision of Services.
- 27.2 Subject to the further provisions of this clause 27, all rights, title, ownership and interest, including but not limited to the intellectual property rights, in and to any Khwezi Materials shall, as between the Parties, at all times remain the sole property of Khwezi. In no event will the Client acquire any right, title, ownership or interest in or to or related to the Khwezi Materials. Nothing in the Trade Agreement will give or be construed to convey to the Client, any ownership, title, interests, or rights in or to or related to the Khwezi Materials.
- 27.3 The Client acknowledges and agrees that the provision of the Services may involve the sub-licensing of software and information systems from a third party (“**Licensor**”). The Client agrees that the Licensor provides no product or service to the Client and the Client shall have no claims whatsoever and howsoever arising against a Licensor.
- 27.4 The Client shall not –
- 27.4.1 access or use Khwezi Materials for any purpose other than for the purpose of this Agreement;

- 27.4.2 use, copy, merge, make derivative works of or transfer copies of any software;
- 27.4.3 use or disclose to any third party any information obtained through or from the Trading Platform other than for the purposes expressly set out in the Trade Agreement;
- 27.4.4 allow any access to or use of the Trading Platform by any third party;
- 27.4.5 sell, lease or otherwise provide, directly or indirectly, any Khwezi Materials;
- 27.4.6 reverse engineer, disassemble or decompile any software forming part of the Khwezi Materials;
- 27.4.7 alter or remove or affect the display of any notices or disclaimers relation to the Khwezi Materials;
- 27.4.8 transmit or receive using Khwezi Materials any information or material which is pornographic, obscene, abusive, profane, offensive, misleading, deceptive, disparaging or defamatory; or
- 27.4.9 use the Khwezi Materials after the termination or cancellation of the Trade Agreement.

PART 7 - BREACH AND TERMINATION

28 DISPUTE RESOLUTION

- 28.1 Any Party may demand that a dispute be determined in terms of this clause 28 by written notice given to the other Parties in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa (“**AFSA**”).
- 28.2 This clause shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator.

- 28.3 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party, by written notice, require the arbitration to be held on an urgent basis. In such event either Party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 28.4 The arbitration shall be held –
- 28.4.1 at Cape Town;
- 28.4.2 with only the legal and other representatives of the Parties to the dispute present thereat; and
- 28.4.3 otherwise in terms of the Arbitration Act, No. 42 of 1965 (“**Arbitration Act**”), unless otherwise provided for herein.
- 28.5 The arbitrator shall be a practising advocate of the Cape Bar of at least ten years’ standing, appointed by agreement between the parties to the dispute, subject to clause 28.6.
- 28.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 28.1, the arbitrator shall be appointed by the Chairperson of the Cape Bar Council (or by AFSA if the Cape Bar Council no longer exists), at the request of either Party to the dispute.
- 28.7 The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 28.8.
- 28.8 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 28.7, at the instance of any of the parties to the dispute.
- 28.9 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential

and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

28.10 It is recorded that it is the intention of the Parties, that any dispute referred to arbitration in terms of clause 28.1 shall be resolved strictly in accordance with the provisions of this clause 28. The Parties accordingly agree and undertake as follows -

28.10.1 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act;

28.10.2 that it shall not make any application to court as contemplated in terms of section 20(1); and

28.10.3 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of the Trade Agreement.

29 TERMINATION

29.1 Termination of Trade Agreement

29.1.1 The Trade Agreement may be terminated by the Client on not less than 20 (twenty) Business Days Written notice to Khwezi, provided that the Client shall be responsible to close all open positions held by the Client in respect of Trades.

29.1.2 The Trade Agreement may be terminated by Khwezi –

29.1.2.1 in terms of any court order, arbitration award or directive from any competent authority;

29.1.2.2 if the Client breaches a material provision of this Agreement and, if the breach is capable of being, the Client fails to remedy such breach after having received 20 (twenty) Business Days' written notice from Khwezi; or

29.1.2.3 the Client commits a material breach of any Applicable Law.

29.1.3 The Trade Agreement shall be terminated immediately and without the requirement for notice if –

29.1.3.1 Khwezi ceases to be licensed to operate as a financial services provider in terms of the FAIS Act; or

29.1.3.2 Khwezi is sequestrated, liquidated or placed under business rescue proceedings, whether provisionally or finally in which event Khwezi shall account to the Client immediately.

29.2 **Termination of Trades**

29.2.1 Khwezi will be entitled to terminate any open Trades in accordance with any court order, arbitration award or ruling or directive from any competent authority, which is binding on Khwez.–

29.2.2 The Trading Platform will automatically terminate a Trade when the Margin is no longer met, as determined in accordance with the Trade Schedule.

29.3 **Termination of Service**

If a particular financial product is no longer available to be Traded on the Trading Platform, for any reason whatsoever, Khwezi will send a Written notice to the Client –

29.3.1 that it will no longer provide the Services in respect of the relevant financial product; and

29.3.2 of the time period in which the Client shall be required to close its open Trades in respect of such financial product, which time period shall be fair and reasonable having regard for the circumstances.

29.4 **Consequences of Termination**

If the Trade Agreement is terminated for any reason whatsoever the amount standing to the credit of the Trading Account shall be paid to the Client from the TPFA Account.

30 FORCE MAJEURE

- 30.1 In this clause 30 **“Force Majeure”** means an event of fire, lightning, explosion, flood, hurricane, act of God, power outages, war, terrorism, civil disorder, epidemics, plagues, strikes; boycotts, and lock-outs of all kinds and go-slows, excluding boycotts, strikes, lock-outs and go-slows by or of the relevant Party’s own personnel, which were outside of the control of the relevant Party or any other event beyond the control of the Party affected by the event, provided in all cases that the relevant Party has taken all steps and precautions which could reasonably be expected for it to have taken in order to prevent such act or event occurring and in order to mitigate and minimise the effects of the event and furthermore that the relevant Party is not at fault.
- 30.2 The Party affected by a Force Majeure (**“the Affected Party”**) will not be liable to the other Party for any default or delay in the performance of its obligations under the Trade Agreement if and to the extent that such default or delay is caused by Force Majeure provided however, that the Affected Party is without fault in causing such default or delay, and such default or delay could not have been prevented by the Affected Party through the use of alternative sources, workaround plans or other means.
- 30.3 The Affected Party shall notify the other Party as soon as reasonably possible of the occurrence or existence of a Force Majeure event or circumstance.
- 30.4 If Khwezi is the Affected Party it may take reasonable steps that it considered necessary to address the Force Majeure, including but not limited to –

- 30.4.1 changing or restricting any hours within which the Client may issue Instructions;
- 30.4.2 terminating, closing out or not rolling over any Trade or cancelling any Instructions; or
- 30.4.3 taking any action which, it deems to be appropriate in the circumstances having regard to its business and its clients generally.

PART 8 – GENERAL

31 AMENDMENTS

- 31.1 Khwezi shall be entitled to amend, add, supplement or replace the Trade Agreement, at its sole discretion. Khwezi shall notify the Client of any such amendment, addition or supplementation or replacement (“**Amendment**”) by –
 - 31.1.1 posting a notice of the Amendment on the Website and updating the documents on the Website to reflect the Amendment;
 - 31.1.2 sending a Written notice of the Amendment to the Client; or
 - 31.1.3 posting a notice of the Amendment on the Trading Platform.
- 31.2 The Amendment shall be effective on the date on which Khwezi notifies the Client of the Amendment in terms of clause 31.1 or on such later date as set out in the notice of the Amendment.
- 31.3 All Amendments of which the Client has been notified in terms of this clause 31 shall be binding on the Client.

32 ADDRESS FOR RECEIVING NOTICES

- 32.1 The Client chooses as the address and contact details set out in the Application as his address for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of or in

connection with the Trade Agreement. The Client shall be responsible to notify Khwezi immediately of any change to its address for the purpose of receiving notices.

- 32.2 Any notice given in terms of the Trade Agreement shall be in writing and shall –
- 32.2.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
 - 32.2.2 if posted by prepaid registered post, be deemed to have been received by the addressee on the 4th (fourth) day following the date of such posting;
 - 32.2.3 if transmitted by facsimile or electronic mail, be deemed to have been received by the addressee on the expiration of 24 (twenty four) hours after transmission; or
 - 32.2.4 if sent by courier be deemed to have been received on the date of delivery by the courier service concerned, unless the contrary is proved.
- 32.3 Notwithstanding anything to the contrary contained or implied in the Trade Agreement, a written notice or communication actually received by one of the Parties from the other including by way of facsimile transmission or electronic mail shall be adequate written notice or communication to such Party.

33 SEVERANCE

Each of the provisions of the Trade Agreement is separate and severable and enforceable accordingly. If any such term or condition is or becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition contained in the Trade Agreement.

34 OPERATION

- 34.1 The expiration, cancellation or other termination of the Trade Agreement shall not affect those provisions of the Trade Agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.
- 34.2 If the operation of the Trade Agreement is suspended or conditional upon the happening of any event and if any obligation or restriction imposed on the parties or any of them is clearly intended to be implemented and given effect to notwithstanding the fact that the Trade Agreement in its entirety may at that time not yet be unconditional, then the relevant obligation or restriction shall nevertheless apply and be given effect to, and the relevant provisions shall create binding obligations on the parties.

35 GENERAL

- 35.1 The Trade Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and save as may be expressly set out herein, no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.
- 35.2 No indulgence, leniency or extension of time which any Party may give or allow to the other Party in respect of the performance of any obligation hereunder, shall in any way prejudice the Party giving or allowing the indulgence, leniency or extension or preclude such Party from exercising any of its rights an enforcing the obligations of the other Party in terms of the Trade Agreement.
- 35.3 No addition to, alteration, cancellation, variation or novation of the Trade Agreement and no waiver of any right arising from the Trade Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised

representatives by hand in manuscript. It is expressly recorded that the provisions of the Electronic Communications and Trades Act No. 25 of 2002 shall not apply to the provisions of this clause.

- 35.4 The person submitting the Application on behalf of the Client as a representative of a juristic person warrants his authority to do so.

36 CESSION AND ASSIGNMENT

- 36.1 The Client shall not be entitled to cede, assign or delegate any of his rights or obligations in terms of or arising from the Trade Agreement or in respect of any Trade to any third party, without the prior Written consent of Khwezi.
- 36.2 Khwezi shall be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from the Trade Agreement to any third party, on Written notice to the Client.

TRADE SCHEDULE

The terms set out in this Trade Schedule shall govern Trades. This Trade Schedule shall form part of and be read with the Agreement.

1) Interpretation

- a) “**Close of Business**” means the relevant time at which the market closes to rollover open Trades;
- b) “**Limit Order**” means, in relation to a Trade, an order placed by the Client on the Platform to enter into that Trade when the applicable exchange rate reaches a predetermined level;
- c) “**Rollover**” has the meaning set out in paragraph 3)a); and
- d) “**Stop Loss Order**” means, in relation to a Trade, an order placed by the Client with Khwezi to close out that Trade at the next available trade price after the predetermined level has been reached.

2) Additional Terms

Khwezi may prescribe additional terms and conditions that apply to Trades on Written notice to the Client from time to time.

3) Rollover and Swap Fee

- a) Each outstanding Trade is automatically valued and rolled over by Khwezi. This is referred to as the “**Rollover**” of a Trade.
- b) Khwezi is entitled to the interest on the debit or credit value of the Trade that has been rolled over (“**the Swap Fee**”). The Swap Fee is calculated and levied with reference to Trades in which both long and short positions are held. It shall be in the sole and absolute direction of Khwezi as to whether to waive the Swap Fee in respect of the Rollover of any particular Trade.
- c) Khwezi determines the value of the Trade as at the Close of Business.
- d) Khwezi determines the interest at which the Swap Fee is calculated.

4) Margin Maintenance

- a) The Client shall be responsible to ensure that sufficient Client Funds are paid into the Trading Account for the purpose of maintaining the Margin, as required by Khwezi from time to time.
- b) The Client acknowledges and agrees that Khwezi will credit those moneys to the TPFA Account only when they become cleared funds.
- c) The Client acknowledges and agrees that –
 - i) The required Margin may differ in respect of each Trade from time to time;
 - ii) it is the Client's responsibility to ensure it is aware of the prevailing Margin requirement at any point in time; and
 - iii) the Client must maintain sufficient surplus Margin so that, should the Trading Platform become unavailable and the Client is unable to ascertain its real-time Margin requirement or amount of Margin held, the required Margin will still be satisfied notwithstanding any market movement during that period.
- d) The Client acknowledges that, by accessing the Trading Platform at any time, the Client is able to view its Margin position in real time.
- e) The Client acknowledges and agrees that the Client is solely responsible for monitoring its margin position daily on a 24-hour basis, by way of the Trading Platform, and that, in doing so, the Client must have regard to –
 - i) outstanding Trades;
 - ii) the volatility of any relevant currency, commodities, securities, derivatives or futures market or securities exchange or of exchanges or markets generally;
 - iii) any applicable exchange rate or interest rate risk; and
 - iv) the time it takes the Client to remit sufficient cleared funds to Khwezi (including the time it takes those funds to clear).
- f) The Client acknowledges and agrees that under no circumstances is it entitled to receive a margin demand, call or notice from Khwezi.
- g) In particular, the Client acknowledges and agrees that, whether or not extreme or unusual market conditions exist, where the value of outstanding Trades is moving or have moved particularly quickly against the Client, Khwezi may not make a margin call or give notice before exercising its right to terminate and close out all (or some only) Trades under the Trade Agreement.

- h) No demand, call or notice made or given by Khwezi to the Client in any one or more instances invalidates the acknowledgement and agreement given by the Client in paragraph g) above.
- i) Khwezi is not obliged to allow the Client time to forward further funds to meet its required Margin under this clause before exercising its right to terminate and close out any Trades under the Trade Agreement.
- j) However, Khwezi may in its absolute discretion allow the Client time to forward funds to meet its required Margin, in which event that permission is only effective once it is confirmed in writing by Khwezi, and then only to the extent specified in the Written notice given by Khwezi.

5) Stop Loss Orders and Limit Orders

- a) The Client may place a Stop Loss Order in relation to a Trade on the Trading Platform.
- b) Khwezi may charge a fee it deems appropriate for the placement of a Stop Loss Order.
- c) The Client authorises Khwezi to withdraw this fee from the TPFA Account when the Stop Loss Order is entered into.
- d) The Trading Platform will close out the relevant Trade in accordance with the Stop Loss Order.
- e) The Client acknowledges that:
 - i) market conditions, including Abnormal Market Conditions, may arise such that Khwezi may only be able to terminate and close out the Trade the subject of the Stop Loss Order at a price or rate that is substantially less than that in the Stop Loss Order;
 - ii) once the Stop Loss Order is triggered, the Trading Platform will close out the Margin Trade at whatever price or rate it is able to obtain for the Client in the market; and
 - iii) the Client accepts these risks accordingly.
- f) The Client may place a Limit Order in relation to a Trade on the Trading Platform.
- g) Khwezi may charge a fee it deems appropriate for the placement of a Limit Order.
- h) The Client authorises Khwezi to withdraw this fee from TPFA Account when the Limit Order is entered into.

- i) The Client acknowledges that –
 - i) while the Limit Order will be entered into at the price or rate set out in the Limit Order, market conditions, including Abnormal Market Conditions, may arise such that Khwezi may only be able to enter into the Trade the subject of the Limit Order at a price or rate that is substantially different from the prices or rates prevailing in the relevant market at the time of entry into of the Trade; and
 - ii) the Client accepts this risk accordingly.